

SPECIAL COUNCIL MEETING

APRIL 11, 2014

The Special Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Friday, April 11, 2014 at 8:08 a.m., after which the following members answered the call of the roll:

Honorable Mason K. Chock, Sr.
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

Recused: Honorable Tim Bynum

Chair Furfaro: I would like to call to order this Special Council Meeting that has been posted today as it relates to ES-717. I did ask the Staff to reconfirm that the County Attorney knew it was an 8:00 a.m. start.

Mr. Kagawa: I think it is imperative that somebody from the County Attorney's Office is present, so I do not know if we should recess until somebody shows up. Let us give them another call and get them over here. They should hear the whole meeting today.

Chair Furfaro: Is somebody going to confirm that we have a County Attorney?

JADE K. FOUNTAIN-TANIGAWA, Deputy County Clerk: Yes, they are going to contact the Office again. Chair for the item, we do have four (4) registered speakers at this point.

Chair Furfaro: Okay. May I have an approval of the agenda?

APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda, as circulated, seconded by Ms. Yukimura, and carried by a vote of 6:0:0:1 (*Mr. Bynum was recused*).

PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

EXECUTIVE SESSION:

ES-717 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the purpose of this Executive Session is to provide the Council with a briefing and to request authority to settle the lawsuit, Tim Bynum vs. County of Kaua'i, et al., Civil No. CV12-00523 RLP (United States District Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Ms. Fountain-Tanigawa: Council Chair the first registered speaker is Ken Taylor.

Chair Furfaro: Thank you. Ken, you are registered to speak, we are calling your name.

There being no objections, the rules were suspended.

KEN TAYLOR: Chair, members of the Council, my name is Ken Taylor. I read recently in the paper that the settlement agreement on this issue had been reached. I am very disturbed that you would consider moving forward with paying out two hundred ninety thousand dollars (\$290,000). I believe that taxpayers of this County deserve to know what the real facts are in this case and the only way that I know that can be resolved at this time is to let it go all the way through the court system. I hope and I pray that you will deny this settlement agreement at this point in time. Yes, I know it is important to save money or think you may be saving money, but it is also very important to bring the facts to the table. Until those facts are totally brought to the table, no settlement agreement should be reached. Thank you.

Chair Furfaro: Thank you. Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Joe Rosa, followed by Glenn Mickens.

JOE ROSA: Good morning, members of the Council, for the record, Joe Rosa. I do not know what to really think and believe. I grabbed my Sunday paper, The Garden Island (TGI), opened it up and got to the back, and I see this big, "\$290,000 Settlement." Prior to that, they said there was no settlement except between the insurance company and the person, the Defendant. So what gives? On top of that, this article in The Garden Island came from the Associated Press (AP), not The Garden Island. Who gives this information out to the Associated Press? The County has Information Officers and I say "Officers" because I know two (2) that has always been referred, and are they not supposed to give the people, the public, the general truth of the thing? It is getting to the point I might have to wear rubber boots when I come in here. It is high time and I think all of this bleeding of money from the taxpayers of Kaua'i should stop. You know, like old Harry Truman used to say, "the buck stops right here," right in this Council. I think you have the authority to deny it because as a public official, more so, you should be in the eyes of the public and be setting an example that laws are there and that does not give anyone an exception to the law. Like I mentioned before, Mr. Nixon falsified something and caused the Watergate problem and he had to pay it by the way he stepped down. Principles like this here— I think public officials are not immune to the law. The saying from the old days is "you commit a crime,

you go serve your time” or you step down from an office. After all, taxpayers are paying these people. So the two hundred ninety thousand dollars (\$290,000)— let him go to court to prove his point and see who is right and give the public, the people, and the taxpayers the truth of all the facts. It is high time. This is getting to be the laughing stock of the State the way the County government is being run here and I know that I hear statements saying that a lot of the testimonies given is hearsay, but what is the truth? Where is the truth?

Ms. Fountain-Tanigawa: Three (3) minutes.

Mr. Rosa: I do not know if it is coming out of government itself or the public? I hope you deny whatever it is and let them go to court. That is the only fair way I see this coming to an end and a settlement. I thank you.

Chair Furfaro: Thank you.

Ms. Fountain-Tanigawa: The next speaker is Glenn Mickens followed, by Shaylene Iseri.

GLENN MICKENS: For the record, Glenn Mickens. Thank you, Jay. I have a short testimony. There is some strange things happening in this bizarre Bynum lawsuit case that certainly need answers as far as I am concerned. Why was the story in The Garden Island last Sunday? “Councilmember Settles Lawsuit for \$290,000” done by the Associated Press? Why is an international news service picking up a local issue? Who gave it to them? Why did The Garden Island not publish the story? A statement was made, “according to court documents filed by Bronster, both sides agreed to settle the suit in February. “The settlement was negotiated by the County’s insurer,” said Robert Katz, who is one of the attorneys representing the County. The documents say that the defendants must pay Bynum two hundred ninety thousand dollars (\$290,000) by April 15th, however Ms. Carvalho strongly states that his allegations are totally false. She says she has not seen any settlement documents and it seems that her being a key player in this fiasco would entitle her to any such documents. Three, if Mr. Bynum were certain that he would be awarded one million six hundred thousand dollars (\$1,600,000) by having a court case rule in his favor, then why did he settle for a mere two hundred ninety thousand dollars (\$290,000)? Four, as Mr. Katz said, if the settlement was negotiated by the County’s insurer, why did the Council not approve of it and sign off on this settlement? Since they have already paid five hundred thousand dollars (\$500,000) in this case, their deductible, before the insurance kicks in, and any settlement made would probably raise their policy, they would naturally be part of any settlement. Even when the County receives a chair or anything, you have to approve it, it goes before you. Since no settlement has taken place, let us take this issue to court and let a judge and jury decide the outcome. I believe the facts will show that no settlement will be forthcoming to Mr. Bynum. Thank you Jay.

Ms. Fountain-Tanigawa: The last registered speaker is Shaylene Iseri.

SHAYLENE ISERI: Good morning Council Chair, Council Vice Chair Chock, and the rest of the members of Council. It is quite unfortunate that we find ourselves here today in light of all that has transpired. It has been a very rocky and ugly road that we all have had to be a part of and it is quite unfortunate. In this case, there were two claims and I will specifically only address the claims that were allocated to me. Of course, there are other defendants that were present

and may be liability of some part in other defendants, but simply addressing the claims from my perspective. There were two claims raised by Mr. Bynum that he claimed were violated. One was that his First Amendment rights were violated because I prevented him from speaking at a budget meeting. This was totally false. Council Chair Furfaro, you were present and there was a recess that was taken. He had the opportunity to consult with the County Attorney, as well as his attorney. There were members of the rest of the public that claimed that he should recuse himself. He came back at the meeting and voluntarily recused himself after consulting with his attorney. There was absolutely no part of mine that prevented him from speaking. Therefore, that claim will never withstand any kind of jury trial much less a Summary Judgment Motion.

The second thing that Mr. Bynum claimed was that I prevented him from speaking as a Councilmember. As these Councilmembers know, there are rules in place that allow a member, when he is denied speaking to ask the rest of the members if they want to overrule the Chair's decision. Mr. Bynum never asked the rest of the members that sat on that Committee whether he could overrule that decision, because he knew that I was correct. The rest of the members would not allow him that opportunity to violate the Council Rules. That was the only two First Amendment claims that currently exist because the last claim, which was the systematic conspiracy or illegal conspiracy to go after him on his Transient Vacation Rental (TVR) violation— his own attorney in his answer after all of the discovery had taken place... his own attorney abandoned that claim. So there is absolutely nothing left as far as claims against me. You all know what the rules are on the County Council. You all know what the First Amendment is. We all know that Mr. Bynum, even after he had filed a case at the Ethics, was very clear that the reason in his own testimony taken under oath and I have his entire testimony here that are hundreds of pages. He had depositions of almost eight (8) hours, where they questioned him, "What was the wrong doing by Ms. Iseri?" and at that time, I was Ms. Iseri-Carvalho. He, himself could not point to any wrongdoing when he testified under oath. We all talk about the standards of a court of law and the community is confused because a lot of people here...I believe here maybe JoAnn has a law license, but a lot of you do not. So a lot of you do not know what the court process is.

Chair Furfaro: Excuse me, Shaylene that is your first three (3) minutes. I will give you an additional three (3) minutes.

Ms. Iseri: Thank you. There have been statements by a Councilmember made about the lack of due process. That is totally false. When a plaintiff files a lawsuit, he has the burden of proving that lawsuit. There have been people here who have been subjected criminally or know about the criminal law process. A person is presumed innocent until they are found guilty. There is a presumption of innocence. This is not a 50/50 type of case. In a civil court of law, the Plaintiff, which is Mr. Bynum, has to prove by preponderance of the evidence that his claims are correct. We have seen all of the evidence. We have heard numerous attorneys and documents, thousands of pages of documents that show his claims were false. There were many demands made in the March 25th letter that clearly showed testimony under oath was totally opposite...the plaintiff; himself, had to abandon that conspiracy claim that prosecutors went after him illegally. That is clearly based upon their own attorney withdrawing that claim. So we sit here now and we look at what they demanded; one million six hundred twenty-five thousand dollars (\$1,625,000) back in March. There was a threat there by Margery Bronster in footnote six (6) saying that, "if this does not settle now, we do not

anticipate providing the County and its insurer another opportunity to settle.” That is what Margery Bronster said. Yet, we sit here today and she is claiming a fraction because they clearly know that their claims were false. They sit here now for less than eighteen percent (18%), only a third, if even that of our attorneys’ fees. We know that money is only going to pay for their attorneys’ fees. That is all it is going to pay for. In essence, the persons who have sustained the biggest loss, the biggest travesty of what occurred in this County are the taxpayers who had to foot the bill for this and not only this case, but numerous other frivolous lawsuits that have been placed. To have a Councilmember sue the County that is paying his paycheck is very offensive to me and should be offensive to you and the rest of the community. Thank you.

Chair Furfaro: Thank you. Are there any more registered speakers?

Ms. Fountain-Tanigawa: No further registered speakers.

Chair Furfaro: May I ask the County Attorney to come up, please?

MONA W. CLARK, Deputy County Attorney: I am going to read into the record, the ES session.

Chair Furfaro: Members, we have a motion and a second and it has been my practice to actually take a roll call.

Ms. Yukimura moved to convene in Executive Session for ES-717, as recommended by the County Attorney, seconded by Mr. Hooser.

Mr. Rapozo: Mr. Chair?

Chair Furfaro: I thought we made a motion...I am looking for the motion. Mr. Rapozo?

Mr. Rapozo: I am not sure why the need to go into Executive Session. We discussed this a couple of days ago and we asked the questions and I thought we agreed to come here and just have the vote out in the open. I think we have heard enough, unless something changed since... what is today? Friday... if anything changed since Wednesday.

Ms. Clark: I think I can provide additional clarity to the Council if we go into Executive Session.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Mr. Rapozo still has the floor.

Mr. Rapozo: I am ready to vote. Again, we have beaten this thing to death. I do not want to go in there to listen to more of this thing. I am not going to support going into Executive Session.

Chair Furfaro: Questions? JoAnn.

Ms. Yukimura: Mr. Chair, this is a very serious decision. I do have some additional questions. I would ask that I would be at least able to ask the attorney in Executive Session. I believe it is important for all of us to hear the discussion. It is not asking to not make the decision, but I think if we have questions, we should be able to, before we make this big decision.

Chair Furfaro:

Mr. Rapozo?

Mr. Rapozo: I am not going to support it. Obviously if you get the votes, we will go in and I will participate, but I want to make sure that the vote is taken out here. I need that commitment from the County Attorney that I am not going to go in there to be told that we cannot vote out in the public.

Chair Furfaro: Listen, I want to give you folks some clarification because I am quite capable to talk to the Office of Information Practices (OIP) and others. The fact of the matter is that we do not have to vote in public, okay? I have cleared that through OIP myself, but I believe for the community that we should come out and do a roll call vote on the item. But I want to make sure everybody understands that based on this acceptance of what is going on with the insurance company, OIP clearly has informed me that option is the Council's. I thought we had an understanding for the benefit of the public when we did get to a vote, we would do the vote in public. I also think it is the right thing, if there is additional information to share with us from our Legal Counsel, that we first go into Executive Session, then come out. That is where I am at as Chair. Mr. Hooser?

Mr. Hooser: Thank you, Chair for your remarks. I believe that we should go into Executive Session. The County Attorney has said there is additional clarity that she can add to the discussion. I also am fully prepared to vote in public and I do not know any member who has expressed otherwise at this point. Yes, I am not aware of anyone saying that they did not want to go in public, but I want to know what we are voting on and I want the latest information from the County Attorney before I cast my vote. Thank you.

Chair Furfaro:

Mr. Kagawa, you have the floor.

Mr. Kagawa: Yes, thank you. I think it is appropriate that I announce at this time and I am glad that the County Attorney is here that I will be filing an Ethics complaint regarding the Vice Chair's possible "yes" vote on the Bynum settlement. This is the reason. Mr. Bynum was a staunch supporter of Mr. Chock in the selection of Councilmember Nakamura's replacement. Had KipuKai Kuali'i been selected, we would have been following the normal process of selecting the eighth place finisher. Now, I find that Mr. Chock's vote may have been compromised because...you can see why. This vote does not reflect my view of the Vice Chair. He is a good man. I have discussed this issue with him and he understands my filing this complaint if he votes for the Bynum settlement. I would hope that Councilmembers would think about the issue and consider his position and not just worry about themselves. I think this is a decision that needs thought and we need to be aware that the public needs to be protected. We need to set the example at the Council. Really, this decision today really troubles me that we are putting him in this kind of predicament. I thought this case was over and you had told us before that the insurance company has the right to settle. I am troubled that we have to vote here and put all of us, including Mr. Chock, in this position. Thank you, Mr. Chair.

Chair Furfaro:

Okay, Mr. Hooser.

Mr. Hooser: I am troubled by my colleague's assertion at this late date. We have been talking about this for a long, long time and on the moments before we are supposed to vote to raise ethical considerations I think is outrageous and without merit. We all have a relationship with Mr. Bynum as a Councilmember and I consider a relationship with each of us on the Council as friends and associates. To say that any of us are not in a position to vote on this matter, I think is just outrageous. To re-argue the appointment of Mr. Chock and in the context of Mr. Bynum's vote and bring in Mr. Kualii, I am just flabbergasted by that and do not see of the relevance of it and would like to move on and vote. Thank you.

Chair Furfaro:

JoAnn.

Ms. Yukimura: I am really troubled, too, by these accusations partly because I do not believe the choice was only between Mr. Chock and Mr. Kualii. There were a lot of other candidates. If we are going to talk about friendships with Mr. Bynum, there are people around this table who have friendships with Ms. Iseri-Carvalho that are not even just friendships, but issues that came up in the depositions regarding a Councilmember also. I think we have to trust each person around the table to make the best judgment and based on the best public interest and I believe we all have that capacity to do that.

Chair Furfaro:

Mr. Rapozo, and then I am going to speak.

Mr. Rapozo: First of all, I do not think Mr. Kagawa's comments were accusations. I think he raised what I believe is a valid concern. I think the members of the public share that concern. I have heard it and I have also spoken to Mr. Chock and what I told Mr. Chock was that whenever those accusations came up about Mr. Chock and his selection, I defended Mr. Chock. I believe Mr. Chock is a great Councilmember and he is a great guy, as Mr. Kagawa has stated. There were no accusations in that. The other thing and I was going to bring this up in my comments, but I will bring it up now because as we talk about conflicts of interest, if this case was at court, if this case was at any body that had to make a determination of someone's guilt or innocence or validity. If we were called on to jury selection, the six (6) of us would all be excused because of our relationship with Mr. Bynum. It is not a negative comment to say that there is a potential conflict. No court in "God's Green Earth" would allow any of us to serve on the jury in this case. Why in the world are we being asked to vote on this matter today? This case belongs in court because this is not a normal case. This case involves a colleague on the County Council, which I believe on Kaua'i has never occurred before. A colleague—we deal with lawsuits, people in the County suing the County, employees suing the County, but never have we dealt with a case where a Councilmember, who we all have relationships with, good or bad. If we were in court this would not be happening. We would all be sent home and we would not be called. I do not think it is far-fetched for Mr. Kagawa to mention a potential conflict. This is a serious matter and Councilmember Yukimura talks about the deposition. I think it needs to be made clear for the record, the case as it sits today, Ms. Iseri's case has been dismissed in her personal capacity. This has nothing to do with individual people. It is involving a lawsuit by a Councilmember against the County of Kaua'i. The County of Kaua'i is the people of Kaua'i. This body is being asked to vote on a settlement involving our colleague. Is that right? No. There is one place this case needs to go and it is to court. I am troubled as well by some of

the comments, but we need to move forward. We need to move forward. The fact of the matter is that people will talk about this. If the settlement goes through, people will talk. That is their right. They can say anything that they want and that is their prerogative, but the bottom line and I agree, is that we have to take a vote. We have no option. I just do not think we should be settling a case involving our colleague because the perception in the public can be very detrimental to this body. Thank you, Mr. Chair.

Chair Furfaro: I am going to go one more time because other than to quote some rules, I have not had my chance to talk. Mr. Hooser, go ahead.

Mr. Hooser: I appreciate the perspective of Councilmember Rapozo and I agree that we all are involved in this and that is what I found troubling by the earlier statements by Mr. Kagawa. To single out a single Councilmember—if we are going to ask the Ethics Commission to... or if anyone is going to ask the Ethics Commission to look at the ethics of single Councilmember, perhaps they should look at all of us to determine who has relationships with whom. Who is potentially at a conflict or not? That is what I am troubled about. It is not... and I agree with you that it is a very awkward and difficult position and we all have relationships, but to single out a single Councilmember is troubling at this late date, specifically. I would like to... we can all have other comments after we go inside and come back out and vote and I will hold my further comments until that point, Chair. Thank you.

Chair Furfaro: JoAnn had the floor next and then you will, Mr. Kagawa.

Ms. Yukimura: I was going to say the same thing that Councilmember Hooser has said, if there is an ethics complaint, it should be filed against everyone. I just want to point out that the County of Kaua'i is not the people of Kaua'i in the sense that the lawsuit has been brought. It is about the departments and the people acting on behalf of the County of Kaua'i in various positions, as Prosecutor, as Planning Director, and as Councilmembers. We, who are in these positions are...we act out of a place of trust and if we violate that trust, we need to be held accountable. So if there has been a violation of Councilmember Bynum's rights, he does have a right to sue the County and there needs to be remedy to it. That is awkward and bizarre because we are all involved, but there is that aspect as well. If he has been mistreated by some Department or Division of this County, he has to have that right, so to just say he cannot sue is not appropriate either.

Chair Furfaro: Mr. Kagawa, this is your second time.

Mr. Kagawa: Yes. To me, flabbergasted is Bill No. 2491, when we had to vote not to override the veto and recessed the Committee, and then selected a person who we knew was going to override the veto. That is flabbergasted. We play by the rules and we had it done. Myself, Mr. Rapozo, and the Mayor felt that the Bill would put us in a compromising position legally. I put on my "big boy shorts" and said, "Well, it is what it is. They outplayed us and they won," but this situation is different. Like you said Councilmember Yukimura, it is unique. When have you ever heard of Councilmembers getting a settlement by the votes of his peers? I think this is a first in history and that is why I am concerned, not because of the character of Mr. Chock. I have known Mr. Chock for a long time. We need more Mr. Chocks around, but it is just the situation of selecting him,

Mr. Bynum having a big role in selecting him with a 3-3 tie with that vote and the Chair in resolving this issue based on Mason's character gave you guys the vote and Mason won. To me, we are at the same count and vote and this involves a settlement, a big payout and rather than going to the truth where he has a big payout and I would support him and say good job, justice has been served, but justice is not served when we settle. Nothing gets resolved when we settle. When we settle, we just pay it out and it can repeat itself again and that is my concern. Thank you, Chair.

Chair Furfaro: I am going speak now, and then I am going to call for the vote. First of all, I want to remind us all, that we all swore an oath of duty to this office, to the people, and to our fiduciary responsibility to the County of Kaua'i. This particular piece here is our acceptance of insurance money that the insurance company is going settle on. Number two (2), about my vote on Mr. Chock, the record shows that my vote was based on the fact that I did not think this Council should lose its right in a tie vote to turn the final choice back over to the Mayor. To have a colleague here— I was the tie-breaking vote. A colleague that was selected by the members of this body and the way this body does business is as a majority group. That is how we do business. We are at a point because there is a settlement being offered by our insurance company and that is why we have insurance. Therefore, I would like to call for a vote to deal with this. I also want to say that Mr. Kagawa has every right to file and be evaluated on the merits that he wants to present to the Ethics Committee, but right now we have an oath and duty to this County Council. A fiduciary responsibility first to the Council and the County and not to any particular individuals. May I call for the vote? We have a motion and second to go into Executive Session. I need four (4) votes to go into Executive Session. That is the superior number of those available today. I am asking the County Attorney, that is the super majority of the count available today?

There being no objections, the rules were suspended.

Ms. Clark: Yes.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Right. We have only six people that are available so we must have four (4) votes. Roll call, please.

The motion to convene in Executive Session for ES-717 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Chock, Hooser, Yukimura,	
	Furfaro	TOTAL – 4,
AGAINST EXECUTIVE SESSION:	Kagawa, Rapozo	TOTAL – 2,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	Bynum	TOTAL – 1.

Chair Furfaro: We will go into Executive Session.

There being no objections, the meeting recessed to convene in Executive Session at 8:48 a.m.

The meeting reconvened at 9:40 a.m., and proceeded as follows:

Chair Furfaro: I would like to call back to order this Special Council Meeting and after our discussion with the County Attorney, we are back in session, but I would need a motion from someone.

Mr. Hooser: Chair, I will make the motion.

Chair Furfaro: Go ahead, Mr. Hooser.

Mr. Hooser moved that the County of Kaua'i, the Kaua'i County Council ratify and accept the settlement agreement entered into by Everest National Insurance Company with Timothy Bynum in Bynum vs. County of Kaua'i, et al., Civil No. CV 12-00523, which agreement provides two hundred ninety thousand dollars (\$290,000) be paid to Bynum by check issued by Everest National Insurance Company and that a settlement and release agreement be executed by the parties to the lawsuit, seconded by Ms. Yukimura.

Chair Furfaro: I have a motion by Mr. Hooser. I have a second from Councilwoman Yukimura. I will go around the table once for any discussion and I will start anywhere. Mr. Kagawa.

Mr. Kagawa: Thank you, Mr. Chair. Three (3) years ago, I was driving by Kealia Beach trying to make a left turn up to Kapa'a High School and a tourist driving a rental car did not even brake—I guess they were looking at the ocean. At full speed, they nailed me and probably hit me at forty (40) to fifty (50) miles an hour. I went through a lot of rehab and everything on my back. In the end, I got a settlement. I was represented by an attorney of twenty thousand dollars (\$20,000), ten thousand dollars (\$10,000) of which went to the attorney. Today I have permanent back damage, every morning I wake up, it is painful. I cannot hit the golf ball like I used to and my back cannot get loose. So does the settlement fit the pain all the time? For me, the ten thousand dollars (\$10,000) is not even close to what I will endure for the rest of my life. This final vote will give Mr. Bynum and his attorney two hundred ninety thousand dollars (\$290,000) from the insurance company, our insurance company, to make this vote and it is just awkward that it has come to this where we have to vote on a fellow colleague. I think it is not too often where Councilmembers are...I do not think it has ever happened in the history where I know that a Councilmember sues the County he serves and the taxpayers he serves and rely on votes by his fellow members. Forgive me if sometimes I sound strong in my opposition of this, but it is... I hope this situation never repeats itself again. It needs to go to court, in my opinion, to prevent future lawsuits like this from happening. I do not know how he has the collateral to endure such a long battle. I am sure it has been tough on him, but that is the way the court system is... very frustrating. Look at our County, we are going broke because of this process and the only people that are making out are the attorneys. A lot of cases are ending up in settlement and there is a bigger picture where we need to fix... I think we need to fix our court system because something is not working. I will leave it at this—recently, I just saw my good friend Danny Smith. I saw him at a baseball game where he was watching his grandson and he was hit riding his bicycle in Kekaha and nearly died. He was in the hospital for a very long time. The former firefighter, still trying to get back off the feeding tube, but he is back in Kekaha and has been walking with a walker. For those who know him and most of you do know him, you know that he is the nicest guy, former fireman... nicest guy you could think of. When I think of these times that we get stressful situations that we find hard to resolve, I think of his situation and I think

there are more important things in life. He is a prime example. He has always been a man of few words and when I saw him recently he said, "Ross, keep it up." I said, "Keep what up?" He said, "Keep fighting for the people. Keep doing what you do. You are doing a good job." When that kind of person tells me that I am doing a good job, I will continue what I do; fighting for the people and doing what is right in my heart. I have hundreds... I do not want to say thousands because that might be exaggerating, but a lot of people come up to me and out of all those people, not one has told me that settling the case as reported in the newspaper is a good idea for the County. All of them are in strong opposition and say that we need to go to court. They do not say that Shay was right or did not say that Sheilah was right, nor did they say that Mr. Bynum was right. They just say that this is so unique that it needs to go to court. This can never happen again and it is a waste of taxpayer moneys, and we could do a lot of good things with all of that wasted money. I agree. That is why I have made my stand. I am doing whatever I can to stop the settlement. That is my way of fighting for the poor guy. That is what I am and how I was brought up, to fight for the poor guy. Thank you.

Chair Furfaro:

I am going let Mr. Chock speak next.

Mr. Chock: *Mahalo.* Thank you. My *kumu* would say... "*Ua pau pilikia*," meaning it is time to get rid of the waste inside you... when you go to the bathroom. I think it is true. This is so much *hewa* on this body, on this island, with this thing that came up. Like Councilmember Kagawa, I have a similar story. In 2001, I was in my rescue helicopter and crashed into the side of Wai'ale'ale and ruptured my disks. I could have had the same kind of situation as Mr. Bynum. I made the choice not to move in that direction; however, I am not Mr. Bynum and I do not know what he has endured in his trials, so I cannot talk about his path. I have heard stories. There has been so many people who have talked about it, who is right and who is wrong, and I truly believe it is like people can go in circles and circles and when you get two circles going around, it becomes a sphere and it spirals downward and that is what we are experiencing here—a spiral and we have to end it. This thing should have ended before I got here, but it did not. I am tired of it. We have to move forward and I know everyone here can agree to that. We have to move forward and how we move forward is in the most positive way. I believe that our County Attorney and our Special Counsel may have not served us well here. We have learned a lot and have gotten smart as a Council since then and being able to deal with it. We will see a lot more efficiency and competency coming from our Council because of our situations and what we have gone through. We will not allow this to occur any longer. We refuse to. In this particular case, with the back and forth, so much wrongdoing that has occurred in so many different directions from so many different people in this lawsuit. At this point, I do not know if the truth will come out. The details are so all over the place. We might be able to come up with who is right and who is wrong, but I do not think it will expose the true nature or the details of the feud or its accomplices and of course there is the side of the case where it truly is, which is in the hands of an insurance company. What I call a formality if we do not sign this piece of paper, the exposure to the County is much greater. I do think we have a responsibility to address that, and make a decision based on that. So no more pain and no more wasted money and that is what I think what will continue to transpire. I will be voting to accept this agreement. Thank you.

Chair Furfaro:

Mr. Rapozo.

Mr. Rapozo: Thank you, Mr. Chair. Mr. Chock brought up a really good point about going in circles about how this County and the Council has gone in circles and the reason it started spiraling downwards is because the rules changed in the middle of the game. This Council was not informed of what was happening. So there was a lot of moving parts, but it was just never moving here, at the body that needs to make these decisions, so I agree with that statement. I already talked about the conflict of interest. No court on this Earth would allow six (6) colleagues of a plaintiff to make a decision for that plaintiff... nowhere. But we are making that decision today. You will hear everybody's justification for it, whatever it is and I respect everybody's opinion, but I cannot for the life of me understand how we can do it. However you frame the motion to ratify, a vote to ratify this settlement is a vote to support it. This decision should not be made by us. This decision should be made in court. First of all, that is what Mr. Bynum demanded when he filed his lawsuit in court. His press release said, "I want my day in court," and let us give him that. The second thing, if it went to court, it would remove the appearance in the community... and just like Mr. Kagawa, I went to Ikeda Barbershop and a Filipino guy asked me, "What is up with the Bynum case? I hope you do not settle." I have been approached by many people and it would remove the appearance that this body is basically trying to take care of our colleague, the perception that exists out there, whether we want to believe that or not. It will give the public the ability to hear the truth and Mr. Chock mentioned who is right, who is wrong, whatever the case is. But the public deserves to know the truth. They deserve to know what happened. I am so upset that I cannot reveal Executive Session material because I think if I got to share with you folks you would agree. Mr. Bynum shared his story in his complaint, in his press releases, in his comments in the media, the Associated Press paints the settlement that never occurred, but we cannot. We need to stop the bleeding of lawsuits in this County.

I know some of you have been around a while. Mr. Chock, you are new and Ross, maybe not so much, but have you noticed in the last couple of years how many lawsuits we settled like that? Without having any depositions? Without having any discovery? It is small in the County's eyes, but nonetheless, we encourage people to sue the County because we will settle. This case was set for summary judgment which is a Motion to Dismiss, and this is important. This case was set for Motion for Summary Judgment, which is where we would have had the opportunity to defend the claims that Mr. Bynum made. That was set for April 4th. Up until that point, we had spent well over seven hundred thousand dollars (\$700,000) of your money because we were going to fight this thing. We had set the summary judgment hearing. One (1) business day before that hearing, and I can say this because this was all posted on the agenda as a request for authority to settle the Tim Bynum case... one (1) business day before the Motions to Dismiss were to be heard. Kind of fishy, in my opinion. I am not a lawyer, but believe me, I have been in the legal system all of my adult life and in all the cases that I have worked in civil cases with attorneys throughout the State, there is a point when you cross that number, you go all the way. You do not spend three-quarters of a million dollars (\$750,000) and right before your opportunity to convince the judge that these claims may not be as accurate as stated, you settle. I have never seen that in my life. What this will do is encourage more lawsuits. Once they know the County's precedent that, in fact, you file a lawsuit, rack up the legal bills, and then you settle. You will never have to go to trial. Mark my words ladies and gentlemen; you will see more lawsuits filed after this thing hits the papers. Again, it is time we put our foot down and say we are going to take this one and I think Councilmember Kagawa made that clear earlier on when it first came on the agenda and I agreed with him that we need to go all the way, because it involved one of our colleagues

and involved a Councilmember that was suing the County and we should take this to court, whatever the costs would be. There will be a lot of reasons why we should settle. We have been advised that we need to stop the bleeding. We need to cut our loss because if we go forward, it is going to cost that much more money. I already stated how much we spent and that was never a problem with our attorneys as we led up to that settlement, as we led up to that point there was never concern about that spending of that money, they were there sending the bills and we were paying. Then a day before we had our day in court, at least our first day in court, now we need to settle this? Justice is not free; justice is not cheap, but it is always worth pursuing. We cannot assess cases and determine whether we are going settle or not based on the costs alone. We cannot do that. For this case, we hired three (3) Special Counsels and we could have hired one (1). We accelerated the costs, in my opinion. We should have paid one-third that, but we went the full whack with your money. You will hear that the insurance company is settling this case and that is correct. The insurance company is going to pay Mr. Bynum two hundred ninety thousand dollars (\$290,000), but we have got to pay the legal bills. We have got to pay the seven hundred fifty thousand dollars (\$750,000) of legal bills with your money. We should go to trial. If we go to trial and prevail, there is a chance we could seek legal fees back from Mr. Bynum and "if" is a big word and you will hear if we lose we will pay more, I agree, and if we win, we might seek reimbursement of the fees. We do not know, but we never went to first base with summary judgment. If we had gone to summary judgment we would have had a better indication, but we did not. This case is one of the cases in my opinion that we have to do what is right and not popular. I have not heard anybody tell me that tells me that we should settle. I am like Councilmember Kagawa and maybe we have the same friends and like I gave you the example of the barbershop yesterday in the parking lot. We should not vote to pass this because we do not want to deal with it anymore. That is not a good reason either. This case, and I am going to speak for myself here, I feel I was misled throughout the whole process by our County Attorneys and by our Special Counsel. Again, I cannot go into detail, but I can say that we never got communication with the attorneys. Never. These things all occurred between phone calls and we were never communicated with until he was too late. In my opinion, we spent way too much money, seven hundred fifty thousand dollars (\$750,000) to go to settlement. You guys talk about the number of Executive Sessions that this case has had and that tells you that there was obviously some aggressive pursuit in this case by the County. But to recommend settlement the day before you had an opportunity to go and share your case and defend your case to me was totally inappropriate, and in fact, I think borderline violating the attorneys' rules of conduct.

Chair Furfaro:

Mr. Rapozo, you have one (1) minute left.

Mr. Rapozo: I will wrap up. The public is asking the questions right now and these are real questions, "Did Mr. Bynum receive special treatment because he was a Councilmember? Did the Council represent the people of Kaua'i or their colleague, who is the plaintiff? Why would we not go to trial, so that the truth can come out?" I cannot answer them. I will answer that after today's vote, but I cannot answer that. I can tell you how I personally feel, but I am only one (1) vote. I guess for me, the question of my colleagues is, are you really ready to vote in support of this today? Have you read and re-read the Executive Session minutes, all the minutes from day one that we were told... what he we were told by attorneys and how we were guided by attorneys and did you read all the transcriptions of the depositions? Including Mr. Bynum's and if you read the transcripts think you would... I think you would see we had a pretty good case. By

not settling this case today a lot of things can happen with the court, but one thing that could happen is this case could be allowed to go forward and go to trial and that is what... so I am not supporting this ratification, this acceptance, or whatever it is called. I will be voting no. Thank you.

Chair Furfaro:

Mr. Hooser.

Mr. Hooser: Chair, I am voting in support of the motion, obviously because I made the motion. I disagree. We go into the same Executive Sessions and we spend hour after hour and come out here and I have a totally different perspective than my colleagues across the table, from what Councilmember Rapozo has. I believe that it is our duty, our fiduciary responsibility, and it is the responsible thing to do to accept the insurance company's conclusion that they want to settle this case.

Chair Furfaro: Excuse me, gentlemen, could you keep your voices down? We are getting echoes here, please. Mr. Hooser has the floor.

Mr. Hooser: If we do not, we are in breach of that contract and expose the County to tremendous additional costs and potential future liabilities. So looking at the same set of facts, I come to a completely different conclusion and what encourages more lawsuits is not this case. What encourages more lawsuits is the conduct of the County of Kaua'i; employees in the Planning Department, in the Prosecutor's Office, and in other Offices. Most of the lawsuits that we have here involve...and it would not even be at this point if it was not concerns in that area. I think the County of Kaua'i should learn from these lawsuits and start conducting themselves in manners that would not encourage them to keep occurring. Councilmember Bynum is a good man... he is a good man. Politicians do not give up their rights just because you get elected to office. You do not give up your right to sue. You do not give up your right to be a person respected in the community. Councilmember Bynum was dumped on, in my opinion, by the Prosecutor's Office and by certain members of the Planning Department and if we look at a...a lot of people say we do not have the facts. The facts as I know it and the facts that I have seen and heard reported in the media, that the Prosecutor's Office pursued charges against Councilmember Bynum for having an illegal multi-family rental in his house. Any member of this community can drive through any community, get out of their car, and see hundreds of potential violations of Building Codes and rentals. In fact, they do not have to get out of their car. They do not have to get out of their house. They can go online and find hundreds of examples of illegal vacation rentals. I think it is a reasonable question to ask, "Is this a political feud?" The judge certainly thinks it was a political feud and the judge certainly thinks it has to do with the Prosecutor's Office and relationship with Councilmember Bynum. What are the other facts? The other facts are that the County employees walked on to Councilmember Bynum's property when he was not home. Walked up to his porch, looked in his window and took pictures. I believe that Councilmember Bynum is entitled to redress and entitled to sue and it was his choice to do so. I would be as furious and outraged as anybody if it occurred to me and just because he is a politician, he does not give up his rights. The facts too, no one has been disciplined for these actions that I know of. The facts are that the judge says that the case does have merit and it is my understanding that potentially the County is at much greater exposure from additional lawsuits if, in fact, we do not settle. The facts are the insurance companies say the costs and the risks are not worth it. The fact is that we have an agreement. We have a contract with the insurance company that says once we reach a certain threshold they have

the authority to settle this case or else we are in breach of contract. If we do not support this contract, we default on the policy and further expose the taxpayers to potentially greater financial... increased financial support. The fact is it is well past the time to settle this case. Councilmember Bynum is a good man and we cannot shirk our responsibilities at this table and the fact is whether we vote or not vote, we are making a decision. If we do not vote, we are making a decision. If we vote, we are making a decision. There is no way around our responsibility as Councilmembers and the Charter and we are here. It is time to move on. I support accepting this settlement and moving on. Thank you, Chair.

Chair Furfaro: Thank you, Mr. Hooser. JoAnn, and then I will speak last and I will call for the vote after that.

Ms. Yukimura: Thank you, Chair. The issue before us is not whether to settle this case. It is whether to ratify the insurance company's decision to settle, which is part of our contract with the insurance company. In my opinion, it is not responsible to not ratify, for two reasons; one, because of the high-costs to the taxpayers, and two, because it will expose the County to larger potential liability caused by official actions by County employees. It is estimated by knowledgeable people that if we refuse to ratify, it will cost another five hundred thousand dollars (\$500,000) in attorneys' fees and costs beyond the seven hundred thousand dollars (\$700,000) already spent. The County will have to pay this amount rather than the insurance company because we will have breached our insurance contract by not ratifying. If the County was completely clean in this matter, and we could win the case, it might be worth the expenditure of another \$1.5 million in taxpayers' money. But if we refuse to ratify, we will have to pay the full amounts. I have already said that. This one million plus dollars— one million dollars (\$1,000,000) to one million five hundred thousand dollars (\$1,500,000) that we would spend and possibly lose the case means that we would be giving away or throwing away, if you will, money that we could use for more frequent bus service and bus shelters, fix our parks and roads, or support our Police. I have read some of the key depositions, which are statements of witnesses given under oath, and I agree with the Federal judge that Mr. Bynum's claims are not frivolous, unreasonable, or groundless. If we go to trial and lose, we will have to pay the plaintiff's attorneys' fees as well. As for the merits of the case, I just want to note that the case against Mr. Bynum; prosecuting him for a zoning violation was referred to the Attorney General, the highest law enforcement officer in the State, and after review of the case, the Attorney General refused to prosecute. As for going to summary judgment, it was my understanding that it was actually quite unlikely that we were going to prevail at summary judgment. Mr. Rapozo is saying that he is not making the popular choice. I actually think that it is the popular choice to settle or to ratify the settlement. Those of us who are not making the popular choice are doing so because we are trying to fulfill our fiduciary duty to the taxpayers. I, too, will be voting to accept and ratify the settlement agreement.

Chair Furfaro: Are you finished? Thank you. I will be speaking last and then I am calling for the vote. This, for me, has been very, very difficult. I feel that I am very sad about these issues. But at the end of the day, my decision here is based on the fact that I have responsibilities as the Chairman. I have to measure issues such as the insurance company raising issues about breach of contract and I have to measure out what risk is and I have a fiduciary responsibility to the corporation called the County of Kaua'i. How do we measure those risks? Really at the end of the day, I want to put this behind us. We have this opportunity to ratify this insurance settlement. We have an opportunity to

continue dialogue with the insurance company maybe to recover some of the other costs that we have had with legal fees that had not been mentioned, but it is a possibility that we could continue some dialogue there. We really need to put this behind us. I am concerned that with Councilmembers sometimes when we discuss strategy to the public, because you are exposing some of the things that we may have to deal with in protecting the County, and that was with the oath that I took twelve (12) years ago and that is the oath that I still live by. It is not the most popular thing to be the Chairman sometimes. You call the shots for the body, based on the discussion you have had with the body and the votes you take them. I know Shaylene well. I served with her on this body and I consider her a friend and somebody that I can deal with and somebody I say hello with and somebody I talk to. I have dealt with Mr. Bynum in many opportunities as a citizen, as a participator in our County, in leadership programs, and so forth and I consider him a friend as well. But at the end of the day, I have to consider the risk for the County of Kaua'i and evaluate, "Do I have additional exposure because I do have a contract with the insurance company?" It is the insurance company moving forward wanting our ratification on the settlement that they have a right to do. I feel that a lot of energies have gone into this from all Departments from the County Attorney's Office. I do have to say that when we have our time at budget to review process for legal fees, I am introducing an entire new process about reporting to the County Council about funding as we are the purse strings. That will be reviewed in this budget session. I also have to tell you that there needs to be a reminder that the primary customer/client, whatever you want to say when we approve Special Counsel funds; it is the Council that is the client. We need to make sure that Special Counsel understands that, keeps us informed, and keeps us very much abreast on what legal consequences are for various actions. I think there is continued dialogue to be talking with the insurance company about other costs and recoveries. I am not prepared to discuss that right now, but I will be supporting the action today in getting this settlement. On that note, I would like to call for the vote, please.

The motion that the County of Kaua'i, the Kaua'i County Council ratify and accept the settlement agreement entered into by Everest National Insurance Company with Timothy Bynum in Bynum vs. County of Kaua'i, et al., Civil No. CV 12-00523, which agreement provides two hundred ninety thousand dollars (\$290,000) be paid to Bynum by check issued by Everest National Insurance Company and that a settlement and release agreement by executed by the parties to the lawsuit, was then put, and carried by the following vote:

FOR RATIFICATION AND ACCEPTANCE OF SETTLEMENT:

Chock, Hooser, Yukimura, Furfaro TOTAL – 4,

AGAINST RATIFICATION AND ACCEPTANCE OF SETTLEMENT:

Kagawa, Rapozo TOTAL – 2,

EXCUSED & NOT VOTING: None TOTAL – 0,

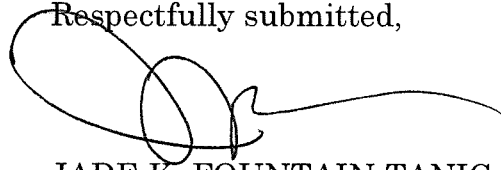
RECUSED & NOT VOTING: Bynum TOTAL – 1.

Chair Furfaro: The vote is 4:2. The settlement ratification by the Council is approved. We will end the Special Council Meeting and we will start with our regular budget meeting in fifteen (15) minutes at 10:30 a.m.

ADJOURNMENT.

There being no further business, the meeting was adjourned at 10:16 a.m.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

JADE K. FOUNTAIN-TANIGAWA
Deputy County Clerk

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